

Bay Delta Conservation Plan ("Water-Fix") Supplemental Draft EIS
Briefing Paper – October 14, 2015

Background

We briefed you last on September 14, 2015. (Briefing Paper Attached)

Our comments on the Supplemental Draft EIS are due October 30th. A number of Congressional representatives requested an extension to the comment period which Bureau of Reclamation, as lead federal agency, denied. The lead state agency, the California Department of Water Resources recommended the denial.

Recommendation

Ex. 5 - Deliberative

The purpose and need for the new WaterFix project, as it was for the former Bay Delta Conservation Plan, is to advance the co-equal goals in the Delta Reform Act: (1) to provide a more reliable water supply and (2) to protect, restore and enhance the Delta ecosystem.

The new intake facilities and tunnels will be beneficial to supporting water reliability and will be beneficial to some fish. However, the SDEIS shows overall conditions for fish would continue to decline significantly. The SDEIS does not evaluate an alternative that would substantially improve aquatic habitat conditions.

Notably, the health of the delta could be improved through modifying flow of water through the delta and through habitat restoration. In the conversion from the Bay Delta Conservation Plan to WaterFix, the lead agencies elected not to address flow as it relates to improved fish habitat. Habitat restoration has also been removed – however the Governor is supporting a separate initiative to use state monies to restore habitat within the delta.

At least three separate regulatory processes are underway which could impose terms and conditions, including flow requirements that could modify the proposed WaterFix operations. These include: (1) State Water Board approval of the requested new intake facilities as well as updated water quality standards; 2) Fish and Wildlife Service and National Marine Fisheries Service Section 7 Incidental Take Permits; (3) 404 and 408 permits from the Army Corp of Engineers.

Given the notable lack of information in the SDEIS addressing critical issues, e.g. flow requirements and also given that the follow-on regulatory processes are likely to address those critical gaps, Ex. 5 - Deliberative is appropriate.

Although the Ex. 5 - Deliberative carries with it a recommendation to submit another Supplemental DEIS, we do not believe this should be burdensome or the cause of undue delay. The lead agencies should be able to compile the new information and conditions established through the regulatory processes and capture them in a comprehensive SDEIS.

State of California

The Governor's Office has expressed an interest in talking with you about the project. They will have concerns about any rating considered adverse to the project. They would like to initiate construction of the project within the Governor's remaining time in office – through 2018.

Talking Points with the State

We understand the strong environmental record of Gov. Brown. He is a strong global leader on environmental issues and we appreciate his leadership – particularly on Climate Change.

We understand the importance of the WaterFix project. The delta supplies drinking water to 25 million people and irrigation water to 4 million acres of farmland. The current plumbing through the delta is vulnerable to seismic activity, levee collapse and sea level rise. We are not adverse to the tunnels.

Like the Governor, we share concern about the overall health of the delta which supports 750 species. Fish populations have declines significantly and modeling suggests that downward trend will continue.

We are also cognizant of the multiple regulatory authorities which impact activities in the delta – many of which impose mandatory requirements. While the NEPA process may be first, it is also advisory only.

We are aware of the Governor's desire to build this project and to do so without undue delay. Our regional team has worked closely at all levels to improve the project and avoid an unsatisfactory rating.

EPA will continue to support the project, as appropriate, as it moves through the regulatory phases.